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No. 07-10441

In The Supreme Court of the United States

JOHNNIE CORLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

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QUESTION PRESENTED

Whether 18 U.S.C. § 3501 – read together with Federal Rule of Criminal Procedure 5(a), *McNabb v. United States*, 318 U.S. 332 (1943), and *Mallory v. United States*, 354 U.S. 449 (1957) – requires that a confession taken more than six hours after arrest and before presentment be inadmissible if there was unreasonable or unnecessary delay in presenting the defendant to the magistrate judge.

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The opinion of the United States Court of Appeals for the Third Circuit is reprinted in the Joint Appendix (J.A.) at 175, and is reported at 500 F.3d 210 (3d Cir. 2007). The Third Circuit's denial of rehearing is reprinted at J.A. 243. The opinion of the district court denying the motion to suppress statements is reprinted at J.A. 93.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The judgment and opinion of the Court of Appeals was entered on August 31, 2007. The Court of Appeals denied rehearing on November 16, 2007. On February 5, 2008, this Court granted petitioner's application for a 60-day extension of time for filing a petition for writ of certiorari, directing that the petition be filed on or before April 14, 2008. The petition was timely filed on that date and was granted on October 1, 2008. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3501 (2000) provides in relevant part as follows:

> **(a)** In any criminal prosecution brought by the United States or by the District of

Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: *Provided,* That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate judge or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer.

Federal Rule of Criminal Procedure 5(a) provides in relevant part as follows:

> (a) In General.
>
> (1) Appearance Upon an Arrest.
>
> (A) A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer as Rule 5(c) provides, unless a statute provides otherwise.

STATEMENT OF THE CASE

This case involves the admissibility of two confessions to bank robbery – one oral and one written – that Johnnie Corley made during more than twenty-nine hours in custody before his presentment to a magistrate judge. The district court admitted the confessions despite Mr. Corley's argument that 18 U.S.C. § 3501(c), read in conjunction with Federal Rule of Criminal Procedure 5(a) and the *McNabb-Mallory* rule,[1] rendered them inadmissible because they were obtained more than six hours after his arrest and because his presentment was unnecessarily delayed. A divided panel of the Third Circuit affirmed, but also acknowledged that its interpretation of § 3501(c) was

[1] *See McNabb v. United States*, 318 U.S. 332 (1943); *Mallory v. United States*, 354 U.S. 449 (1957).

contrary to precedent in other circuits and not the "better" of the conflicting readings of the statute. Mr. Corley seeks reversal and remand for a new trial in light of the plain meaning of the statute, which, together with the *McNabb-Mallory* rule, renders both confessions inadmissible.

1. Three men robbed the Norsco Federal Credit Union in Norristown, Pennsylvania, on June 16, 2003. J.A. 178. Members of a fugitive task force of the Federal Bureau of Investigation (FBI), including Special Agent Vito Roselli and State Trooper Vincent D'Angelo,[2] began investigating the robbery and received information that Mr. Corley may have been involved. They also learned that Mr. Corley was wanted on a local bench warrant from Philadelphia on an unrelated matter. J.A. 20, 38-39, 48.

On the morning of Wednesday, September 17, 2003, Agent Roselli, Trooper D'Angelo and other members of the FBI fugitive task force attempted to arrest Mr. Corley on the warrant in Sharon Hill, Pennsylvania, a suburb of Philadelphia. J.A. 13. As they surrounded his car with guns drawn, Mr. Corley jumped out, pushed past one of the officers and ran. Roselli and the officer gave chase. They followed him across a street, through several yards, across a creek, up an embankment and into a backyard. J.A. 14-16,

[2] The FBI fugitive task force included state and local law enforcement officers deputized by the United States Marshal Service. J.A. 19.

26. During the chase, Agent Roselli fired one round from his gun, but did not hit Mr. Corley. He testified that the discharge was accidental. J.A. 25-26, 112-13. The agent caught Mr. Corley in the backyard and arrested him. The time of the arrest was 8:00 a.m. J.A. 28, 113.

2. Agent Roselli placed Mr. Corley under federal arrest for assault on a federal officer. J.A. 52. Agents put him in a local police car and had him taken to the Sharon Hill Police Department, where he was held until 11:45 a.m. J.A. 40, 93, 168. No explanation was given for holding Mr. Corley for nearly four hours in Sharon Hill, other than Trooper D'Angelo's testimony that during this time he went to interview neighbors living near where the arrest took place "to see if they had any information on Mr. Corley himself or any information that would . . . further our investigation." J.A. 40.

At approximately 11:45 a.m., FBI agents picked up Mr. Corley from the Sharon Hill police station and drove him to Philadelphia. J.A. 93, 168. Once there, the agents first took him to Thomas Jefferson University Hospital for treatment of a minor cut on his hand, received as he ran from the police that morning. J.A. 28, 114. He was admitted to the hospital at 12:12 p.m., received five sutures, and was discharged at 3:20 p.m. J.A. 49-50, 90-92.

From the hospital, the agents took Mr. Corley by car to the FBI office in Philadelphia, just a few blocks away, arriving at 3:30 p.m. J.A. 40, 168, 227-28 n.24.

Although the FBI offices are located in the same building as the federal magistrate judges' courtrooms and chambers, J.A. 237, and although a magistrate would have been available that day (Wednesday), J.A. 80, the FBI agents did not present Mr. Corley to a magistrate on the federal assault charge. Instead, Roselli and D'Angelo kept him at the FBI office for interrogation. By this point, seven and one-half hours had elapsed since Mr. Corley's arrest.

The only reason D'Angelo gave for not taking Mr. Corley before the magistrate that afternoon was his desire to question him about the bank robbery:

> Q. [A]t any time in the afternoon from 3:30 or when you first saw him at 3:30 was Mr. Corley taken before a Federal Magistrate to be advised of the complaint against him for the assault of the Federal Officer, did that happen?
>
> A. No. – not on the 17th of September, no.
>
> Q. . . . Instead what happened was you stated your desire to Mr. Corley that you wanted to question him about his participation in this bank robbery, is that a fair statement?
>
> A. Yes, we al – yes.

J.A. 53. D'Angelo further explained that his purpose in questioning Mr. Corley was to get a confession:

> Q. . . . [I]t would be fair to say that you wanted him to confess to the robbery, isn't that a fair statement?

A. Absolutely.

Q. And that was your purpose in questioning him, correct, to obtain a confession?

A. That was my chief purpose in talking to him.

J.A. 68-69.

Agent Roselli gave a similar explanation:

Q. . . . Now, you have Mr. Corley transported from the hospital to see you with regards to interrogation, correct?

A. Into an interview, yes, sir.

Q. And the purpose of that meeting and the purpose of your order to transport Mr. Corley is to question him about this robbery and to obtain a confession, is that true?

A. That is one of the purposes, yes, sir.

J.A. 138-39.

3. Roselli and D'Angelo began talking with Mr. Corley at 3:50 p.m. J.A. 61. They also gave him something to drink and some potato chips to eat. At first, they did not ask him any questions. Instead, they explained to him that he was not under arrest for the bank robbery, but that they had information he was involved in it. They said that if he cooperated with them he could get a lower sentence through a motion from the government. J.A. 41, 51, 55. This discussion regarding the value of cooperation continued for over one hour. J.A. 61.

At 5:07 p.m., Mr. Corley read and then signed a waiver-of-rights form, waiving his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). J.A. 61, 115-16. At 5:27 p.m. – nine hours and twenty-seven minutes after his arrest – he began giving a confession to the bank robbery. This oral confession concluded at 6:38 p.m., and was not written down. J.A. 62, 117-23. When asked to put his confession in writing, Mr. Corley said he was tired and asked to continue the following day. J.A. 46. He was taken to the Federal Detention Center in Philadelphia, where he spent Wednesday night. J.A. 64.

Federal magistrates conduct arraignments on indictments in Philadelphia each week on Thursdays at 10:00 a.m. J.A. 82. But rather than present Mr. Corley for his initial appearance before the magistrate conducting arraignments that Thursday morning, September 18, 2003, the FBI agents brought him back to the FBI office at 10:30 a.m. for further interrogation with agents Roselli and Stephen Heaney. *Id.* Roselli wrote out a confession in which Mr. Corley admitted to participating in the bank robbery, and Mr. Corley signed it at 10:45 a.m. J.A. 85, 172-74. Heaney acknowledged that the reason they did not bring Mr. Corley before a magistrate that morning was their desire to interrogate him:

> Q. . . . The reason that Mr. Corley was not brought before a magistrate on the morning of 9/18/03 and that he was brought to the FBI was the FBI's desire, when I say the FBI I'm talking about you and Agent Roselli's

> desire, to question Mr. Corley concerning the events of a bank robbery that he was being investigated for, isn't that true?
>
> A. Yes.

J.A. 83.

The agents finally brought Mr. Corley before a federal magistrate judge for his initial appearance at approximately 1:30 p.m. on September 18, 2003 – twenty-nine and a half hours after his arrest. J.A. 94.

4. Mr. Corley was charged by indictment with conspiracy to commit armed bank robbery (18 U.S.C. § 371, count one), armed bank robbery (18 U.S.C. § 2113(d), count two), and use and carrying of a firearm in furtherance of a crime of violence (18 U.S.C. § 924(c), count three). J.A. 179. He filed motions to suppress his oral and written confessions. J.A. 1-2. The district court denied the motions, finding after a hearing that both the oral and written statements were voluntary and therefore admissible under its interpretation of 18 U.S.C. § 3501. The district court also found that the oral statement was made within six hours of the arrest, excluding three hours and forty-five minutes during which Mr. Corley was "hospitalized" – a computation that included the time spent transporting Mr. Corley to Philadelphia, as well as the time at the hospital itself. J.A. 97.

A jury trial was held September 27-28, 2004. Mr. Corley's oral and written confessions constituted the only evidence introduced identifying him as one of the

robbers. J.A. 218 n.17 (Sloviter, J., dissenting). Mr. Corley was convicted of counts one and two (conspiracy and bank robbery), and was acquitted of count three (possession of a weapon during a crime of violence). On December 21, 2004, the district court sentenced Mr. Corley to 170 months' imprisonment, five years' supervised release, a fine of $1,000, restitution in the amount of $47,532.36, and a special assessment of $200. J.A. 4.[3]

5. A divided panel of the Court of Appeals for the Third Circuit affirmed the district court's ruling that both confessions were admissible because they were voluntary. J.A. 216-17. The majority ruled that it was bound by the prior ruling of the Third Circuit in *Gov't of Virgin Islands v. Gereau*, 502 F.2d 914 (3d Cir. 1974), which held that voluntary statements are admissible even if they were obtained outside the six-hour time period in 18 U.S.C. § 3501(c) as a result of unreasonable delay. J.A. 189-92. The majority expressed concern, however, about the district court's finding that the oral confession was made within six hours of arrest, observing that this finding was "contrary to the text of the statute – which provides that the only reasons for extending the six-hour

[3] Mr. Corley was prosecuted separately for the federal assault charge arising from his arrest on September 17, 2003. He pleaded guilty, and on February 26, 2004, he was sentenced to twenty-six months in prison, three years of supervised release, and a special assessment of $100. *United States v. Corley*, No. 03-cr-664 (E.D. Pa.). The assault and bank robbery sentences are concurrent.

period are those relating to transportation or to the availability of a magistrate judge or other officer." J.A. 197 n.7. But the majority concluded that it did not need to further address the district court finding, given its ruling that both confessions were voluntary. *Id.* The majority thus implicitly acknowledged that both confessions were taken outside the six-hour period.

The majority reasoned that *Gereau* provides a "plausible" reading of the six-hour rule of 18 U.S.C. § 3501(c). J.A. 189. It interpreted § 3501 as making voluntariness the sole test for admissibility in cases of delayed presentment. Under the majority's reading, the statute "replaces the 'unnecessary delay' standard [in Fed. R. Crim. P. 5(a)] with the voluntariness test in subsections (a) and (b) of the statute, in which the length and necessity of the presentment delay are factors in the analysis but not necessarily dispositive." J.A. 190. The majority read subsection (c) as instructing courts "that they may not find a confession involuntary 'solely' because of the length of presentment delay where the confession is *otherwise* voluntary and where the delay is less than six hours (or longer than six hours but explained by transportation difficulties)." J.A. 191.

The *Corley* majority acknowledged a circuit split on this issue, however: the Second, Ninth and D.C. Circuits have concluded that this interpretation not only renders the six-hour rule in § 3501(c) "superfluous," but is contrary to the statute's legislative

history. J.A. 194-95. The majority then noted the strength of these arguments:

> Our dissenting colleague cogently argues that the Second, Ninth and D.C. Circuits have the better of the argument regarding the proper interpretation of § 3501. Were we writing on a clean slate, we might agree. As explained above, however, our Court has already resolved these issues in *Gereau*.

J.A. 195. Further undermining *Gereau*, the *Corley* majority noted that *Gereau* itself was based on Second and Ninth Circuit precedent that "those Circuits have since repudiated." J.A. 196.

6. Judge Sloviter, in dissent, explained that § 3501 must be read in the context of this Court's decisions in *McNabb v. United States*, 318 U.S. 332 (1943), and *Mallory v. United States*, 354 U.S. 449 (1957), as well as Rule 5(a) of the Federal Rules of Criminal Procedure, which codifies the requirement of prompt presentment. Together, these establish what is known as the "*McNabb-Mallory* rule," under which a confession is inadmissible if obtained in violation of a defendant's right upon arrest to be taken before a judicial officer without unnecessary delay. J.A. 219-23.

Against this backdrop, Judge Sloviter reasoned, § 3501(c) must be read as having "'only excised the first six hours after arrest or detention from the scope of the *McNabb-Mallory* exclusionary rule.'" J.A. 226 (quoting *United States v. Superville*, 40 F. Supp. 2d

672, 683 (D.V.I. 1999)). Like the majority, Judge Sloviter found that the two confessions in this case were taken outside the six-hour period allowed under § 3501(c). Judge Sloviter thus concluded that the *McNabb-Mallory* rule should be applied and that the presentment delay was unreasonable because it was for the purpose of interrogation. For this reason, she concluded, the *McNabb-Mallory* rule requires suppression of Mr. Corley's statements. J.A. 239.

SUMMARY OF ARGUMENT

FBI agents purposefully and unnecessarily delayed Mr. Corley's presentment to a magistrate judge following his arrest in order to obtain his oral and written confessions. The admissibility of these two confessions turns on the meaning of 18 U.S.C. § 3501 in light of the right to prompt presentment. The proper interpretation of the statute is that confessions made outside the six-hour time limitation set forth in § 3501(c) are inadmissible under the *McNabb-Mallory* rule if the defendant's presentment to a magistrate was unnecessarily delayed.

1. Rule 5(a) of the Federal Rules of Criminal Procedure codifies the common-law right to prompt presentment before a neutral judicial officer following arrest. The rule requires presentment "without unnecessary delay." In *McNabb v. United States*, 318 U.S. 332 (1943), and *Mallory v. United States*, 354 U.S. 449 (1957), the Court established a rule of

evidence to enforce this right of prompt presentment and to protect against the use of delayed presentment as a means of extracting a confession. Under the *McNabb-Mallory* rule, when law enforcement officers obtain a confession from a defendant during a period of unnecessary delay between arrest and presentment, the confession is inadmissible.

In 1968, Congress addressed the *McNabb-Mallory* rule by enacting 18 U.S.C. § 3501(c). The statute provides that voluntary confessions made within six hours of arrest are not inadmissible solely because of delay. The central question presented in this case is whether § 3501 abrogates the *McNabb-Mallory* rule entirely, or merely exempts from the rule confessions made within the first six hours of arrest. The text of § 3501(c), read in light of *McNabb* and *Mallory*, compels the conclusion that Congress intended only to exempt the six hours following arrest, and to codify the *McNabb-Mallory* rule for confessions obtained outside that time period. Principles of statutory construction confirm this interpretation, as does the legislative history of § 3501.

Section 3501(c), by the plain meaning of its text, sets a six-hour "time limitation" on the inadmissibility of voluntary confessions due solely to delay. Confessions are not "inadmissible solely because of delay" in presentment if the confession was "made voluntarily" *and* "within six hours" following arrest, unless delay beyond six hours was reasonable considering transportation and distance to the magistrate. 18 U.S.C. § 3501(c). By rendering voluntary confessions

"not inadmissible solely because of delay" only if made within six hours of arrest, § 3501(c) eliminates the *McNabb-Mallory* rule for voluntary confessions made within six hours, but leaves it intact for voluntary confessions made outside that time period. The statute's text shows Congress intended that confessions made outside this period, even if voluntary, be inadmissible under the *McNabb-Mallory* rule if the presentment delay was unnecessary.

This interpretation of § 3501(c)'s text is supported by well-established principles of statutory construction. Although subsection (a) of the statute states broadly that voluntary confessions are admissible, this general statement cannot be read to abrogate completely the *McNabb-Mallory* rule without making subsection (c) superfluous. Such a result would violate the rule of construction that effect should be given to every clause of a statute where possible. Under this reading, voluntary statements – regardless of whether made outside the six-hour time limitation and regardless of presentment delay – would be admissible. The six-hour time limitation would therefore limit nothing at all, and the entire subsection would be without effect.

To give effect to subsection (c), § 3501 must be interpreted as leaving intact the *McNabb-Mallory* rule for voluntary confessions made outside the six-hour period. To the extent there is any tension between the general statement in subsection (a) that voluntary confessions are admissible and the specific provision in subsection (c), the well-established

principle that a specific provision controls over a general one should apply. Subsection (c) thus must be interpreted as exempting only the first six hours after arrest from the *McNabb-Mallory* rule.

Subsection (c) cannot be interpreted, as suggested by the Third Circuit, as merely barring the court from finding a confession made within the six-hour period "involuntary" based on delay alone if the confession was "otherwise" voluntary. This interpretation requires rewriting the statute by substituting and adding words to the text. In addition, such a construction would be constitutionally doubtful because the courts, not Congress, must determine which confessions are voluntary in accordance with the Due Process Clause and the Fifth Amendment. Congress cannot constitutionally narrow the factual grounds for determining voluntariness. Subsection (c), therefore, should be construed in accordance with its text and structure, which establish that delay – and not merely involuntariness – is a criterion for the inadmissibility of confessions.

The legislative history of § 3501 confirms that Congress intended not to abrogate the *McNabb-Mallory* rule entirely, but instead to limit its application to confessions taken more than six hours after arrest. Although the original version of subsection (c) would have abrogated the rule completely, that is not the version that was enacted. Instead, the Senate reached a compromise and passed an amended version of § 3501(c) that merely carved out from the *McNabb-Mallory* rule confessions taken within six

hours following arrest. This compromise was based on a similar statute applicable to the District of Columbia, which the same Congress had enacted five months earlier. In addition, during debate, the sponsor and floor manager of § 3501 made clear that subsection (c) alone was intended to address the *McNabb-Mallory* rule and that subsection (a) was never meant to abrogate the rule.

Interpreting § 3501 as leaving the *McNabb-Mallory* rule intact for confessions made outside the six-hour time period assists in the effective administration of justice by providing a clear rule to law enforcement and the courts. Under this interpretation, § 3501(c) establishes a bright-line rule that federal law enforcement agents and the courts can readily apply when determining the admissibility of confessions in cases of delayed presentment. As this Court has observed, such a rule is much easier to implement than the totality-of-the-circumstances test used for determining voluntariness. *See Dickerson v. United States*, 530 U.S. 428, 444 (2000). The rule is also a necessary adjunct to *Miranda v. Arizona*, 384 U.S. 436 (1966), because it ensures that presentment delay will not be used as a means of pressuring arrestees to waive their Fifth Amendment rights.

2. Application of § 3501(c) and the *McNabb-Mallory* rule to the facts of this case is straightforward. As the majority and the dissent below agreed and the government conceded, both of Mr. Corley's confessions were taken more than six hours after his arrest. The confessions were therefore outside the

time limitation of § 3501(c), and the *McNabb-Mallory* rule applies. Since the FBI agents admitted that they delayed Mr. Corley's presentment to the magistrate for the purpose of obtaining his confessions, the delay (totaling over twenty-nine hours) was patently unreasonable and unnecessary under the *McNabb-Mallory* rule and Rule 5(a). Such purposeful exploitation of delay requires that the confessions be inadmissible.

ARGUMENT

I. UNDER 18 U.S.C. § 3501(c), FEDERAL RULE OF CRIMINAL PROCEDURE 5(a) AND THE *McNABB-MALLORY* RULE, CONFESSIONS MADE MORE THAN SIX HOURS AFTER A PERSON'S ARREST, AND BEFORE THE PERSON'S PRESENTMENT TO A MAGISTRATE, ARE INADMISSIBLE IF THE PRESENTMENT WAS UNNECESSARILY OR UNREASONABLY DELAYED.

Section 3501(c), read together with Federal Rule of Criminal Procedure 5(a) and the *McNabb-Mallory* rule, requires the exclusion of voluntary confessions taken more than six hours after arrest if the defendant's presentment to a magistrate judge was unnecessarily delayed. This interpretation is compelled by the statute's text, accepted principles of statutory construction, and the legislative history of § 3501. It also furthers the effective and efficient administration of justice.

A. The *McNabb-Mallory* rule protects the right of prompt presentment codified in Rule 5(a) by rendering inadmissible those confessions made during a period of unnecessary presentment delay.

The right of prompt presentment, which originated at common law, ultimately was codified in Rule 5(a) of the Federal Rules of Criminal Procedure. Fed. R. Crim. P. 5(a)(1)(A). Recognizing that law enforcement officers at times ignored the right of prompt presentment in order to obtain confessions, this Court decided a series of cases, whose holdings came to be known as the *McNabb-Mallory* rule. *See McNabb v. United States*, 318 U.S. 332 (1943); *Upshaw v. United States*, 335 U.S. 410 (1948); *Mallory v. United States*, 354 U.S. 449 (1957). The *McNabb-Mallory* rule protects the right of prompt presentment, and guards against police exploitation of presentment delay, by rendering inadmissible confessions taken during a period of unnecessary delay.

The right of prompt presentment has its origins in the common-law protections against unlawful arrest. *See Gerstein v. Pugh*, 420 U.S. 103, 114-16 (1975) ("At common law it was customary, if not obligatory, for an arrested person to be brought before a justice of the peace shortly after arrest."). One of the most important of those protections "was that a person arresting a suspect without a warrant must deliver the arrestee to a magistrate 'as soon as he reasonably can.'" *County of Riverside v. McLaughlin*,

500 U.S. 44, 61 (1991) (Scalia, J., dissenting) (quoting 2 M. Hale, Pleas of the Crown 95 n.13 (1st Am. ed. 1847)). It was clear at common law, moreover, "that the only element bearing upon the reasonableness of delay was not such circumstances as the pressing need to conduct further investigation, but the arresting officer's ability, once the prisoner had been secured, to reach a magistrate who could issue the needed warrant for further detention." *Id.*

The Court first addressed the right to prompt presentment in *McNabb*.[4] There, federal officers held the defendants in custody on murder charges and interrogated them over the course of several days before bringing them before a judicial officer. 318 U.S. at 334-38. The government argued that the resulting confessions were admissible because they were voluntary, but the Court declined to reach this issue.

[4] Some cases discussing presentment delay refer to the initial appearance before a magistrate as "arraignment," and discuss delay as "pre-arraignment" delay. *See, e.g., United States v. Perez*, 733 F.2d 1026, 1027 & n.1 (2d Cir. 1984). *See also* J.A. 223 n.21 (Sloviter, J., dissenting) (noting confusion over terminology). To avoid confusion with the term "arraignment" as used in Federal Rule of Criminal Procedure 10, at which the defendant enters a plea to an indictment or information, the term "presentment" is used throughout this brief to refer to the defendant's initial appearance before a magistrate under Rule 5 following arrest, at which the magistrate informs the defendant of the complaint and affidavit in support of the arrest, the right to counsel, the circumstances under which the defendant can be released pre-trial, and the right to remain silent. Fed. R. Crim. P. 5(d).

Instead, the Court took note of federal legislation requiring prompt presentment and exercised its supervisory authority over the federal courts to rule that the violation of the defendant's right to prompt presentment meant that the confessions "must be excluded." *Id.* at 339-42.

Shortly after *McNabb,* the right of prompt presentment became embedded in the Federal Rules of Criminal Procedure with the adoption of Rule 5(a), requiring that federal officers take an arrested person before a judicial officer "without unnecessary delay." Fed. R. Crim. P. 5(a) (adopted 1946). As the Court later described it, this rule is a "compendious restatement, without substantive change, of several prior specific federal statutory provisions." *Mallory*, 354 U.S. at 452. The current version of Rule 5(a) is substantially the same as the original, and requires in pertinent part that "[a] person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge. . . . " Fed. R. Crim. P. 5(a)(1)(A).

Soon after the adoption of Rule 5(a), the Court reaffirmed *McNabb* in *Upshaw,* making clear that the *McNabb* rule applies even in the absence of coercion. As the Court explained, under the "*McNabb* rule . . . a confession is inadmissible if made during illegal detention due to failure promptly to carry a prisoner before a committing magistrate, whether or not the 'confession is the result of torture, physical, or psychological. . . . '" 335 U.S. at 413 (quoting *United States v. Mitchell*, 322 U.S. 65, 68 (1944)).

The Court reiterated the rule in *Mallory*, holding that delay for the purpose of interrogation is "unnecessary delay" under Rule 5(a). 354 U.S. at 455. In *Mallory*, police arrested the defendant for rape in the early afternoon and held him at police headquarters "within the vicinity of numerous committing magistrates." *Id.* But instead of presenting him to a magistrate, they held him for questioning and obtained a confession approximately seven hours later. Police did not present the defendant to a magistrate until the next morning. *Id.* at 450-51. The Court ruled that the delay violated Rule 5(a) and rendered the confession inadmissible. *Id.* at 455.

The Court in *Mallory* emphasized that although the arrested person may be "booked" before presentment, "he is not to be taken to police headquarters in order to carry out a process of inquiry that lends itself, even if not so designed, to eliciting damaging statements to support the arrest and ultimately his guilt." *Id.* at 454. The prohibition of "unnecessary delay" means that any delay in presentment "must not be of a nature to give opportunity for the extraction of a confession," regardless of voluntariness. *Id.* at 455.

B. 18 U.S.C. § 3501(c) codifies a limited version of the *McNabb-Mallory* rule, applicable to confessions taken more than six hours after arrest.

Congress addressed the admissibility of confessions in 18 U.S.C. § 3501, enacted as part of Title II of

the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, §§ 701-02, 82 Stat. 210 (1968). Subsection (c) of § 3501 addresses the circumstances under which confessions may be inadmissible solely due to presentment delay. The text of the statute makes clear that Congress established a six-hour "time limitation" in order to carve out from the *McNabb-Mallory* rule confessions made within six hours of arrest, and left the *McNabb-Mallory* rule in effect for confessions made outside that six-hour period. This interpretation is confirmed by well-established principles of statutory construction and the legislative history of § 3501.

1. The text of 18 U.S.C. § 3501 establishes that subsection (c) limits but does not entirely abrogate the *McNabb-Mallory* rule.

Section 3501 begins in subsection (a) by setting out the general rule that a confession "shall be admissible if voluntarily given," and requiring the trial judge to hold a pre-trial hearing to determine voluntariness. 18 U.S.C. § 3501(a). Subsection (b) sets out a non-exclusive list of factors to be considered in determining voluntariness under the totality of the circumstances. One of these factors is presentment delay – "the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment." 18 U.S.C. § 3501(b)(1).

By making voluntariness the "touchstone of admissibility" and omitting any warning requirement, Congress intended subsections (a) and (b) to overrule legislatively the requirement of *Miranda v. Arizona*, 384 U.S. 436, 467-71 (1966), that defendants held in custody be warned of their rights before making a statement. *Dickerson v. United States*, 530 U.S. 428, 436 (2000). In *Dickerson*, the Court rejected the attempt and upheld *Miranda* as announcing a constitutional rule. *Id.* at 444.

Subsection (c) addresses the *McNabb-Mallory* rule by setting a "time limitation" on the inadmissibility of voluntary confessions due solely to presentment delay. It reads in pertinent part as follows:

> [A] confession made or given by a person . . . , while such person was under arrest or other detention . . . **shall not be inadmissible solely because of delay** in bringing such person before a magistrate . . . **if such confession is** found by the trial judge to have been **made voluntarily** and if the weight to be given the confession is left to the jury **and if such confession was made . . . within six hours immediately following his arrest or other detention:** *Provided*, That the **time limitation** contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate or other officer beyond such six-hour period is found by the trial judge to be **reasonable considering the means of transportation and the**

> **distance to be traveled to the nearest available magistrate or other officer.**

18 U.S.C. § 3501(c) (bold emphasis added).

As this Court has stated, in construing what Congress has enacted, "[w]e begin, as always, with the language of the statute." *Duncan v. Walker*, 533 U.S. 167, 172 (2001). The language of subsection (c) establishes that voluntariness is not the only criterion for admissibility in cases of presentment delay. Instead, subsection (c) provides that a confession "shall not be inadmissible solely because of delay" if three conditions are met: (1) if the confession was "made voluntarily"; (2) if its weight is left to the jury; "*and* [3] if such confession was made or given . . . within six hours" of arrest (unless a longer period is reasonable considering transportation and distance to the magistrate). 18 U.S.C. § 3501(c); *see also United States v. Perez*, 733 F.2d 1026, 1031 (2d Cir. 1984). The word "and" makes clear that the six-hour time limitation is a requirement *in addition* to voluntariness. *See* J.A. 234 (Sloviter, J., dissenting).

The plain meaning of this statutory text does not abrogate the *McNabb-Mallory* rule, but instead codifies a limited version of it. Congress is presumed to be familiar with this Court's precedents, *see Cannon v. University of Chicago*, 441 U.S. 677, 699 (1979), and the phrase "inadmissible solely because of delay" is a clear reference to the rule established in *McNabb* and *Mallory*. Subsection (c) thus states that the *McNabb-Mallory* rule is inapplicable only if three

conditions are met, including the requirement that the confession be taken within six hours of arrest. The statutory language demonstrates Congress's intent to leave the *McNabb-Mallory* rule intact for confessions made outside that time period.[5]

Accordingly, as four circuits have held, § 3501(c) effectively codifies the *McNabb-Mallory* rule, with an exception for statements made within six hours of arrest. *See United States v. Mansoori*, 304 F.3d 635, 660 (7th Cir. 2002); *United States v. Alvarez-Sanchez*, 975 F.2d 1396, 1402-03 (9th Cir. 1991), *rev'd on other grounds*, 511 U.S. 350 (1994); *Perez*, 733 F.2d at 1031 (2d Cir. 1984); *United States v. Robinson*, 439 F.2d 553, 563-64 (D.C. Cir. 1970). *See also* J.A. 226 (Sloviter, J., dissenting). *Cf. United States v. Beltran*, 761 F.2d 1, 8 (1st Cir. 1985) (holding delay in excess of six hours unreasonable, but suppression of confessions not automatically required because "no purposeful postponement," and delay not used for "proscribed purposes envisioned" by Court in *McNabb* and *Mallory*).

The statute, read together with Rule 5(a) and the *McNabb-Mallory* rule, requires a two-step analysis for determining whether a voluntary confession is inadmissible solely on grounds of presentment delay:

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[5] As discussed below, this interpretation is confirmed by the legislative history of § 3501, which makes abundantly clear that subsection (c) was intended to modify the *McNabb-Mallory* rule, not eliminate it entirely. *See infra* pp. 38-56.

first, the court must determine whether the confession was made within six hours of arrest (unless a longer period of time was reasonable considering transportation and distance to the magistrate); and second, if the confession fell outside the six-hour period, the court must determine whether the delay from arrest to presentment was unreasonable or unnecessary under the *McNabb-Mallory* rule and Rule 5(a). If so, the confession is inadmissible.

2. Principles of statutory construction confirm that § 3501 leaves the *McNabb-Mallory* rule intact outside the six-hour time limitation.

Well-established principles of statutory construction confirm the plain meaning of § 3501(c)'s text. These principles require that (a) statutes be interpreted so as not to render any portion superfluous, (b) specific provisions prevail over any conflicting general provisions, (c) statutes not be rewritten to reach a particular interpretation, (d) constitutionally doubtful interpretations be avoided, and (e) statutes be interpreted in accordance with their structure.

The conclusion of the Third Circuit below – that voluntariness is the sole criterion for admissibility under § 3501, and that presentment delay can be considered only as a factor that may affect whether

the confession was voluntary[6] – violates each of these principles of statutory construction.

(a) Section 3501 should be interpreted so as not to render subsection (c) superfluous.

The interpretation of § 3501 making voluntariness the sole criterion for admissibility renders subsection (c) entirely superfluous. As such, it violates the rule of construction that courts should give effect to every provision in a statute when possible. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004) ("'A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. . . . '") (quoting 2A Norman J. Singer, Sutherland Statutes and Statutory Construction § 46:06 (rev. 6th ed. 2000)); *Washington Market Co. v. Hoffman*, 101 U.S. 112, 115-16 (1879) ("We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word.").

If voluntariness were the sole criterion for admissibility, it would make no difference whether a confession was given before or after the six-hour time

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[6] J.A. 189-92 (majority opinion). *See also United States v. Glover*, 104 F.3d 1570, 1583 (10th Cir. 1997); *United States v. Christopher*, 956 F.2d 536, 538-39 (6th Cir. 1991); *Gov't of Virgin Islands v. Gereau*, 502 F.2d 914, 924 (3d Cir. 1974).

period expired. Either way, the confession would be admissible so long as it was voluntary. The six-hour "time limitation" in § 3501(c) would not be a "limitation" on anything at all, and the entire subsection would be without effect. *See* J.A. 229-30 (Sloviter, J., dissenting); *Perez*, 733 F.3d at 1031; *Alvarez-Sanchez*, 975 F.2d at 1400; *United States v. Superville*, 40 F. Supp. 2d 672, 681 (D.V.I. 1999). Subsection (b), which already requires consideration of presentment delay in determining involuntariness (as opposed to inadmissibility under the *McNabb-Mallory* rule), would subsume subsection (c). 18 U.S.C. § 3501(b)(1). To give effect to subsection (c), voluntariness cannot be the sole criterion for admissibility. For confessions made outside the six-hour time period, unnecessary presentment delay must, pursuant to the *McNabb-Mallory* rule, be a basis for finding the confession inadmissible, even if the confession is voluntary. Without the *McNabb-Mallory* rule, subsection (c) becomes entirely superfluous.

(b) Subsection (c), as a specific provision, should prevail over the general provision of subsection (a), to the extent that they conflict.

Giving effect to subsection (c) as a partial codification of the *McNabb-Mallory* rule may appear to create tension with subsection (a)'s general statement that all voluntary confessions are admissible. But even if the provisions were actually in conflict

(which the legislative history of § 3501 demonstrates not to be the case, *see infra* pp. 52-56), subsection (c) would prevail on the specific issue of inadmissibility due solely to presentment delay.

Where there is "inescapable conflict between general and specific terms or provisions of a statute, the specific will prevail." 2A Norman J. Singer, Sutherland Statutes and Statutory Construction § 46:5 (rev. 7th ed. 2008); *see Dep't of Rev. of Oregon v. ACF Industries,* 510 U.S. 332, 340 (1994) (holding that general provision in statute barring tax discrimination against rail carriers should not be interpreted to subvert specific provision in same statute allowing for exemption from taxation for certain specified types of property); *Busic v. United States*, 446 U.S. 398, 406 (1980) ("[A] more specific statute will be given precedence over a more general one. . . . "); *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973) (holding that general terms of civil rights statute, 42 U.S.C. § 1983, which, interpreted literally, would provide relief to prisoners, cannot override specific provision in 28 U.S.C. § 2254, making habeas corpus sole remedy for prisoners seeking relief).

Accordingly, the specific provision in subsection (c), codifying the *McNabb-Mallory* rule for voluntary confessions made outside the six-hour time limitation, must control over the general statement in subsection (a) that voluntary confessions are admissible. No other interpretation gives effect to subsection (c).

(c) The Third Circuit's rewriting of subsection (c) to support its interpretation should be rejected.

The majority below attempted to avoid rendering subsection (c) superfluous by, in effect, rewriting the subsection. This interpretation must be rejected because, as the Court recently stated, "[w]e are not at liberty to rewrite [a] statute to reflect a meaning we deem more desirable. Instead, we must give effect to the text Congress enacted." *Ali v. Fed. Bureau of Prisons*, ___ U.S. ___, 128 S. Ct. 831, 841 (2008) (footnote omitted). The key sentence in the Third Circuit majority opinion is as follows:

> In this vein, subsection (c) instructs courts that they may not find a confession involuntary 'solely' because of the length of presentment delay where the confession is *otherwise* voluntary and where the delay is less than six hours (or longer than six hours but explained by transportation difficulties).

J.A. 191 (italics in original). But the statute itself reads quite differently:

> [A] confession . . . shall not be *inadmissible* solely because of [presentment] delay . . . if such confession is found by the trial judge to have been *made voluntarily* . . . and if such confession was given . . . within six hours [of arrest].

18 U.S.C. § 3501(c) (emphasis added). The court's interpretation effectively rewrites the statute, substituting the word "involuntary" for "inadmissible," and

adding the word "otherwise" before "voluntar[il]y." Both of these judicial amendments must be rejected because they alter the statute's text in a way that is contrary to its plain meaning.

Substitution of "involuntary" for "inadmissible." As the Second Circuit has cogently explained, Congress "specifically used the term 'inadmissible solely because of delay.'" *Perez*, 733 F.2d at 1031. If Congress had intended admissibility to turn only on voluntariness, subsection (c) would have "contained language to the effect that 'a confession shall not be deemed *involuntary* solely because of delay.'" *Id.* (italics in original). By coupling "inadmissible" with "delay" in subsection (c), Congress clearly intended "that delay may serve as the basis for a separate, independent exclusionary remedy." *Id.* Congress used the term "inadmissible" precisely because it means something different than "involuntary." "Inadmissible" is broader than "involuntary," and equating the two ignores Congress's choice of words.[7] As the legislative history reveals, *see infra* pp. 52-56, the use of

[7] This difference is evident in related case law and rules of evidence. Confessions that are voluntary may nonetheless be inadmissible, for example, because they were the fruit of an unlawful arrest, *see Brown v. Illinois*, 422 U.S. 590, 602 (1975), *Wong Sun v. United States*, 371 U.S. 471, 485-86 (1963), or because they were obtained in violation of the defendant's Sixth Amendment right to counsel, *see Smith v. Illinois*, 469 U.S. 91, 94-95 (1984), or because they lack sufficient relevance to the offense charged under Federal Rules of Evidence 401 and 402, or because their unfair prejudicial effect outweighs their probative value under Federal Rule of Evidence 403.

"inadmissible" was deliberate, distinguishing the purpose of subsection (c) (to address the *McNabb-Mallory* rule) from the purpose of subsections (a) and (b) (to overrule *Miranda*). The Third Circuit majority's substitution of "involuntary" for "inadmissible" must therefore be rejected as contrary to the text and plain meaning of the statute.

Addition of "otherwise." The addition of the word "otherwise" before "voluntarily" must also be rejected. The Third Circuit majority inserted this word in an effort to save subsection (c) from being entirely superfluous under its interpretation of § 3501. The insertion of "otherwise" allowed the majority to interpret the subsection as "merely instruct[ing] trial courts that the inherently coercive effect of a lengthy delay in presentment is not sufficient, *standing alone*, to render a confession involuntary" where the confession is "*otherwise* voluntary" and the delay is either less than six hours or reasonable in light of transportation and distance to be traveled. J.A. 191-92. Under this rewriting, subsection (c) merely narrows somewhat the court's ability to consider delay in its determination of voluntariness under subsections (a) and (b). But the very fact that the majority must add the word "otherwise" in order to support its interpretation is telling. "Otherwise" is not in the statute, and Congress must be presumed to have meant what it said. Indeed, the legislative history shows that Congress's choice of the word "voluntary," unmodified, was deliberate and incompatible with the majority's rewriting of the text. *See infra* pp. 55-56.

(d) The Third Circuit's interpretation of subsection (c) should be rejected as constitutionally doubtful.

The majority's interpretation must also be rejected as constitutionally doubtful. The Court has long adhered to the principle that "'where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.'" *Jones v. United States*, 526 U.S. 227, 239 (1999) (quoting *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)). In explaining this principle of statutory construction, the Court has stated, "It is 'out of respect for Congress, which we assume legislates in the light of constitutional limitations,' *Rust v. Sullivan*, 500 U.S. 173, 191 (1991), that we adhere to this principle, which 'has for so long been applied by this Court that it is beyond debate.'" *Jones*, 526 U.S. at 240 (quoting *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988)).

The majority's interpretation of § 3501(c) is constitutionally doubtful because it narrows the grounds on which a court may find a confession involuntary. The courts, not Congress, must determine which confessions are involuntary, and therefore inadmissible, under the Due Process Clause and the Fifth Amendment privilege against self-incrimination. *See Jackson v. Denno*, 378 U.S. 368, 376-77 (1964) (barring the

admission of confessions found by trial judge to be involuntary); *Miranda*, 384 U.S. at 460-61 (holding Fifth Amendment privilege against self-incrimination fully applicable during custodial interrogation). As the Court stated in *Miranda*, issues of "constitutional dimensions . . . *must be determined by the courts*," and "[t]he admissibility of a statement in the face of a claim that it was obtained in violation of the defendant's constitutional rights is an issue the resolution of which has long since been undertaken by this Court." *Id.* at 490 (emphasis added). *See also Dickerson*, 530 U.S. at 444 (holding that Congress may not legislatively overrule *Miranda*'s warnings-based approach to determining admissibility of confessions).

Congress, therefore, can neither direct the courts to admit confessions the courts find to be involuntary, nor accomplish the same thing by narrowing the factual grounds for determining involuntariness. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda*, 384 U.S. at 491. Since the majority's interpretation of § 3501(c) would restrict the grounds on which courts may find confessions involuntary, it is at least constitutionally doubtful and must be rejected.

(e) Section 3501(c) should be interpreted in accordance with its structure, which makes clear that it addresses delay as an independent criterion for the inadmissibility of confessions.

The structure of subsection (c) confirms the plain meaning of § 3501's text. *See Ali*, 128 S. Ct. at 840 (interpretation of statute should be consistent with its text and structure). While subsection (b) addresses presentment delay as a factor in determining voluntariness, the role that delay in presentment plays in subsection (c) is different. In subsection (c), presentment delay is the criterion for the inadmissibility of *voluntary* confessions taken outside the six-hour time limitation. This difference is demonstrated by the fact that subsection (c) is structured with a proviso that lists reasons that may justify delay past the six-hour time period, and these reasons – mode of transportation and distance to the nearest magistrate – have no bearing on voluntariness. As the Second Circuit explained, "were voluntariness the sole consideration, the necessity of the delay would be entirely irrelevant." *Perez*, 733 F.2d at 1034. The structure and text of subsection (c) thus make clear that its purpose is not to narrow the test for voluntariness, but to set a time limit on the admissibility of voluntary confessions in cases of delayed presentment.

3. The legislative history confirms that § 3501 partially codifies the *McNabb-Mallory* rule.

Because the meaning of § 3501 is clear both from its text and under accepted principles of statutory construction, the Court need not rely on the statute's legislative history. Consultation of the legislative history remains appropriate to confirm the statute's meaning, however, and should be determinative if the Court deems § 3501 ambiguous. *See, e.g.*, *Negonsott v. Samuels*, 507 U.S. 99, 106-09 (1993) (consulting legislative history to confirm interpretation of text deemed unambiguous through statutory construction); *United States v. R.L.C.*, 503 U.S. 291, 298-305 (1992) (placing determinative weight on legislative history, including textual evolution of bill, when interpreting ambiguous text).[8]

The legislative history of Title II of the Omnibus Crime Control and Safe Streets Act of 1968 strongly confirms that, in enacting § 3501, Congress intended only to modify the *McNabb-Mallory* rule by limiting its application to confessions taken more than six

[8] Perhaps the best practice is to consider legislative history whenever it is available, and to give it the weight it deserves based on the amount of light it sheds on the statute's meaning. *See Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 65 (2004) (Stevens, J., concurring) ("It would be wiser to acknowledge that it is always appropriate to consider all available evidence of Congress' true intent when interpreting [statutes].").

hours after arrest.[9] First, the textual evolution of § 3501(c) bears that out. As originally proposed, subsection (c) sought to abrogate the *McNabb-Mallory* rule entirely. It was amended, however, to partially codify and partially abrogate the rule – a compromise the very same Congress had enacted five months earlier with respect to prosecutions in the District of Columbia.

Second, Senator McClellan, who introduced § 3501 and was the floor manager of the Omnibus Act, made clear that § 3501(a)-(b) and § 3501(c) were intended to be independent provisions addressing separate issues – subsections (a) and (b) were to overrule *Miranda*, and subsection (c) (as originally

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[9] The Omnibus Act originated in the House as H.R. 5037, 90th Cong., 1st Sess. (1967), and was limited to the provision of federal grants and other assistance to local law enforcement agencies. After passage in the House, the bill was referred to the Senate Judiciary Committee, where its provisions were expanded and made Title I of a new Senate bill, S. 917, 90th Cong., 2d Sess. (1968). Section 3501 began as a separate bill, S. 674, 90th Cong., 1st Sess. (1967), and was wholly incorporated into Title II of S. 917 by the Judiciary Committee. *See* S. Rep. No. 1097, 90th Cong., 2d Sess., *reprinted in* 1968 U.S.C.C.A.N. 2112, 2123 (1968). Title II also sought, *inter alia*, to overrule *Miranda*. *See id.* at 2123-53. The provision overruling *Miranda* was approved without substantive amendment. 114 Cong. Rec. 14,172, 14,798 (1968). S. 917 was further expanded in committee and on the Senate floor, ultimately comprising ten substantive titles. It was then inserted into H.R. 5037 in lieu of that bill's original text, and was passed by the Senate. *Id.* at 14,798. The House approved the Senate version of H.R. 5037 soon thereafter. *Id.* at 16,299-300.

proposed) was to overrule *McNabb* and *Mallory*. Indeed, the provisions were voted on separately by the Senate, demonstrating that subsection (c) alone was meant to address the *McNabb-Mallory* rule. The Third Circuit majority's reading of § 3501 – that subsection (a) entirely nullifies the *McNabb-Mallory* rule – is therefore incorrect.

(a) Proposed § 3501(c) was amended to effect a compromise partially codifying the *McNabb-Mallory* rule.

Section 3501(c), as originally proposed, completely abrogated the *McNabb-Mallory* rule. Its text made that purpose unmistakable:

> (c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein . . . shall not be inadmissible solely because of delay in bringing such person before a [magistrate] if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury.

S. 917, 90th Cong., 2d Sess. (1968). The Senate Report on the bill and the early floor debate confirm this reading.[10]

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[10] *See, e.g.*, S. Rep. No. 1097, *supra*, at 2124-25; 114 Cong. Rec. 11,206 (remarks of Sen. McClellan) ("[V]oluntariness should

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But subsection (c) encountered significant opposition, and was eventually amended on the Senate floor. From the beginning, the debate on the provision was driven by one overarching concern: the amount of interrogation, and thus presentment delay, that should be permitted. Detractors of the *McNabb-Mallory* rule emphasized that confessions were being suppressed as a result of minimal delay, citing *Alston*

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be the only test for the court in determining admissibility. . . . * * * And that is the procedure that title II would restore."); *id.* at 11,234 (remarks of Sen. Tydings) ("[T]itle II . . . overrules [the Supreme Court's] decision[ ] in the *Mallory* case."); *id.* at 11,594 (remarks of Sen. Morse) ("[Section 3501(c)] would overrule the Supreme Court's decision in [*Mallory*]."); *id.* at 11,595 (same) (quoting U.S. Attorney General's view that § 3501(c) represents an "outright repeal of *Mallory*"); *id.* at 11,612 (remarks of Sen. Thurmond) ("[Title II] would set aside the inflexible and technical rule[ ] established in [*Mallory*]."); *id.* at 11,745 (remarks of Sen. Brooke) ("[W]e have the Senate attempting to overrule a decision of the U.S. Supreme Court, this time [*Mallory*]."); *id.* at 12,292, 12,293 (remarks of Sen. Fong) ("[T]itle II, if enacted, would . . . [o]verrrule the Supreme Court's decision in [*Mallory*]. * * * The outright repeal of *Mallory* by § 3501(c) would leave [Federal Rule of Criminal Procedure 5(a)] without a remedy."); *id.* at 12,924 (remarks of Sen. Young) ("[Title II] would have the effect of reversing [*Mallory*]. . . ."); *id.* at 14,016 (remarks of Sen. Stennis) ("[Section 3501(c)] will counteract the so-called *Mallory* rule. . . . * * * Mere delay would cease to be an absolute and automatic cause for excluding valuable and often essential evidence."); *id.* at 14,131 (remarks of Sen. Bible) ("The design of [§ 3501(c)] is to overcome a serious impediment to the administration of justice . . . caused by [*Mallory*]."); *id.* at 14,158 (remarks of Sen. Hart) ("[T]itle II . . . would repeal such Supreme Court cases as [*Mallory*]."); *id.* at 14,167 (remarks of Sen. McIntyre) ("Section 3501(c) . . . overrul[es] the Supreme Court's decision in [*Mallory*].").

v. United States, 348 F.2d 72 (D.C. Cir. 1965), in which a confession was suppressed due to the presentment delay occasioned by five minutes of police questioning.[11] The Senate Report began by decrying *Alston*, S. Rep. No. 1097, 90th Cong., 2d Sess., *reprinted in* 1968 U.S.C.C.A.N. 2112, 2124 (1968), and Senator McClellan opened debate on Title II by referring to the case as "the acme of irrationality and the ultimate absurdity," 114 Cong. Rec. 11,202 (1968). Supporters of the *McNabb-Mallory* rule likewise focused on the issues of interrogation and presentment delay, but emphasized instead that § 3501(c), as proposed, would permit unlimited interrogation and delay.[12]

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[11] *See, e.g.*, 114 Cong. Rec. 13,846 (remarks of Sen. McClellan) ("The phrase 'without unnecessary delay,' under the distorted construction now applied by this court, means that the police cannot detain and talk to, or interrogate for even 5 minutes, one who is a suspect of having committed a crime of violence."); *id.* at 14,017 (remarks of Sen. Stennis) ("The length of delay which invalidates a voluntary confession has been steadily reduced by the courts from 5 hours to 5 minutes and has been applied in countless cases to free self-confessed criminals of every kind, including murderers."); *id.* at 14,132-33 (remarks of Sen. Bible) (citing *Alston* and other cases, and concluding that "voluntarily given statements have been excluded solely on the basis of very minimal delay"); *id.* at 14,168 (remarks of Sen. McIntyre) ("I have been alarmed by the far-reaching applications of legal criteria made by the Supreme Court in determining the admissibility of confessions. . . .").

[12] *See, e.g.*, 114 Cong. Rec. 11,740, 13,990 (remarks of Sen. Tydings) ("The effect [of Title II] would be to permit Federal criminal suspects to be questioned indefinitely before they are presented to a committing magistrate. . . ."); *id.* at 11,894 (same)

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Both sides recognized, however, that they were not writing on a clean slate with respect to the *McNabb-Mallory* rule. The very same Congress, only five months earlier, had legislated on the rule in the context of prosecutions in the District of Columbia. Title III of An Act Relating to Crime and Criminal Procedure in the District of Columbia, Pub. L. 90-226, § 301(b), 81 Stat. 734, 735-36 (1967), popularly known as the "D.C. Crime Act," provided that certain confessions, *taken within a fixed period after a suspect's arrest* (in that statute, three hours), would not be inadmissible solely due to presentment delay:

> (b) Any statement, admission, or confession made by an arrested person within three hours immediately following his arrest shall not be excluded from evidence in the courts of the District of Columbia solely because of delay in presentment.

Id.

It is beyond dispute that this language was intended to strike a compromise on the *McNabb-Mallory* rule – rendering it inapplicable to confessions

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("The delay could be 2 months, and it would not be conclusive as to voluntariness."); *id.* at 12,290 (remarks of Sen. Fong) ("Title II . . . would open the doors to such practices as holding suspects incommunicado for an indefinite period. . . . "); *id.* at 14,135 (remarks of Sen. Brooke) ("No limitations are placed upon the length of time which may be permitted to elapse between arrest and arraignment. . . . [Section 3501(c)] would invite indefinite delays before arraignment.").

taken within the time limitation, but codifying the rule in full force for confessions taken outside that period. The Senate Report on the bill, H.R. 10783, 90th Cong., 1st Sess. (1967), makes this point particularly clear:

> The committee's recommendations as contained in . . . the instant bill *represent[] a legislative effort to retain for persons charged with crime those essential individual rights that the* Mallory *rule and its subsequent case law refinements have made*. At the same time the recommendation strikes a balance point in permitting police to carry on proper and necessary questioning under clearly defined limitations.

S. Rep. No. 912, 90th Cong., 1st Sess., at 18 (1967) (quoting S. Rep. No. 600, 89th Cong., 1st Sess., at 19-20 (1965)) (emphasis added).[13] Thus, confessions

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[13] *Accord* S. Rep. No. 912, *supra*, at 15 ("The interpretation of the *Mallory* rule and rule 5(a) in the District of Columbia has been that . . . voluntarily given statements have been excluded in a significant number of cases on the basis of very minimal delay alone. The committee feels that this interpretation of the law is wrong and that title III is designed to strike a proper balance in this difficult area."); *id.* at 16 ("The problem which gives rise to the legislative proposal before the committee lies not with the *Mallory* rule but with its application in the District of Columbia.") (quoting testimony of U.S. Deputy Attorney General Nicholas B. Katzenbach before the Senate Judiciary Committee (Nov. 5, 1963)). Committee reports on a bill are the most authoritative source for determining Congress's intent, provided the statute is enacted in the form reported by the committee. *Garcia v. United States*, 469 U.S. 70, 76 (1984).

taken beyond the three-hour time limitation were made subject to the *McNabb-Mallory* rule, to be admitted or excluded as courts determined under the rule's definition of unnecessary delay:

> [S]tatements [taken outside the three-hour period] will not be protected by title III, but they may still be admitted in evidence so long as they were obtained with full regard for the constitutional and other rights of the arrested person, *including his rights under Rule 5(a) and the* Mallory *decision*.

Id. at 17 (emphasis added).

The D.C. Crime Act was in the forefront of senators' minds during the drafting and debate of Title II of the Omnibus Act. It was repeatedly discussed throughout the debate,[14] and Senator Bible, the

[14] *See, e.g.*, 114 Cong. Rec. 11,745 (remarks of Sen. Brooke) ("The Senate in fact considered this question a short time ago in connection with the District of Columbia Crime Act. . . . "); *id.* at 11,754 (remarks of Sen. Bible) ("[A]s the Senate knows, [the efforts of the Committee on the District of Columbia] bore fruit with the approval of a District of Columbia omnibus crime bill last December – Public Law 90-226. * * * I am pleased to know that our spadework on [problems caused by *Mallory* has] been helpful to [Senator McClellan] and the Committee on the Judiciary in their development of the present bill."); *id.* at 14,131-33 (same) (discussing D.C. Crime Act extensively); *id.* at 12,292-93 (remarks of Sen. Fong) ("Unlike the [D.C. Crime Act], enacted in the first session of this Congress, no time limit or other safeguards on interrogation are provided."); *id.* at 14,165 (remarks of Sen. Metcalf) ("Last session hearings were held on [the D.C. Crime Act] which less than 5 months ago passed this

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chairman of the Committee on the District of Columbia and floor manager of the D.C. Crime Act, worked closely with Senator McClellan in crafting the Omnibus Act. 114 Cong. Rec. 11,202, 11,754; S. Rep. No. 1097, *supra*, at 2124-25. It was understood by all that proposed § 3501(c), in abrogating the *McNabb-Mallory* rule entirely, went far beyond Title III of the D.C. Crime Act. As Senator Bible himself put it,

> The [D.C. Crime Act] has already taken the first step toward loosening the noose that the *Mallory* rule and subsequent court decisions placed around the neck of law enforcement here in the Nation's Capital. *Title II of the present bill proposes a further loosening of this noose not only here in the District of Columbia but throughout the Nation*.

Id. at 14,133 (emphasis added).[15]

Against this backdrop, the Senate considered two critical amendments to Title II: an amendment

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same Congress and became law. The *Mallory* and *Miranda* decisions were considered during the course of those hearings.").

[15] *Accord* 114 Cong. Rec. 13,848 (remarks of Sen. McClellan) (noting that D.C. Crime Act only "revised" the *McNabb-Mallory* rule); *id.* at 11,745 (remarks of Sen. Brooke) ("[The D.C. Crime Act] . . . authorized a maximum 3-hour period for interrogation. . . . Today, however, an effort is being made to authorize indefinite periods of interrogation between arrest and charge."); *id.* at 12,293, 14,136 (remarks of Sen. Fong) ("Even in the recently enacted [D.C. Crime Act], the Congress did not see fit to repeal *Mallory* completely. . . . "); *id.* at 14,165 (remarks of Sen. Metcalf) ("I fail to understand why suddenly I find myself faced with a bill that would abrogate [the D.C. Crime Act].").

proposed by Senator Tydings to strike the title in its entirety, leaving the *McNabb-Mallory* rule wholly intact (Amendment No. 788); and – subsequently – an amendment by Senator Scott to add a six-hour time limitation to § 3501(c), akin to the three-hour provision of the D.C. Crime Act (Amendment No. 805). 114 Cong. Rec. 13,651, 13,830 (Amendment No. 788); 14,184-85 (Amendment No. 805).

Debate on the Tydings Amendment focused once again on the extremes of presentment delay – the very minimal delay that had led to the exclusion of the confession in *Alston*, and the unlimited delay permitted by proposed § 3501(c). 114 Cong. Rec. 14,172-73 (remarks of Sen. McClellan), 14,174 (remarks of Sen. Cooper). But then, in the midst of the debate, Senator McClellan agreed to consider a compromise provision – "modif[ying]" the *McNabb-Mallory* rule along the lines of the D.C. Crime Act – if the Tydings Amendment were first rejected:

> If later a Senator wishes to offer an amendment, that can be done, but it cannot be done on this vote. The matter will be open for amendment. A suggestion has been made for 6 hours. I said I would consider it, and I mean that in all good faith. *There must be some modification of the* [McNabb-Mallory] *rule because it is not fair now and it does an injustice.*

Id. at 14,173 (emphasis added).

The Tydings Amendment was rejected, and the compromise provision was then offered by Senator Scott, as Amendment No. 805. 114 Cong. Rec. 14,174-75, 14,184-85. The Scott Amendment added to the end of proposed § 3501(c) the eventually-enacted language " . . . and if such confession was made or given by such person within six hours immediately following his arrest or other detention."[16] *Id.* Senator Scott described the amendment as duplicating the effect of Title III of the D.C. Crime Act:

> My amendment is an attempt to conform, as nearly as practicable, to title III of Public Law 90-226, the District of Columbia crime bill enacted last year, which provides that confessions obtained during periods of interrogation up to 3 hours shall not be excluded from evidence in the courts of the District of Columbia. *My amendment provides that the period during which confessions may be received or interrogations may continue, which may or may not result in a confession, shall in no case exceed 6 hours.*

Id. at 14,184 (emphasis added).

Honoring the commitment he had made to secure rejection of the Tydings Amendment, Senator McClellan reconsidered his original position in favor

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[16] The proviso of enacted § 3501(c), limiting the applicability of the six-hour limitation in cases of reasonable delay necessitated by travel to a distant magistrate, was added later by separate amendment. 114 Cong. Rec. 14,787.

of complete abrogation of the *McNabb-Mallory* rule and embraced the Scott Amendment as a fair compromise:

> I say to [Senator Scott] that I want to be reasonable in this matter. I do not want an unreasonable time, but I do want an opportunity for the law enforcement officers to perform their duty. *I think this is a fair adjustment of the differences of opinion about this matter.* * * *
>
> I cannot [agree to the three-hour limitation of the D.C. Crime Act], because I have yielded here, in order to provide some time; so that they cannot say it is completely arbitrary. *I have made adjustments in my own thinking about it and reached this agreement. The bill was reported without any limitation, and I think I am being fair*.

114 Cong. Rec. 14,185 (emphasis added).[17]

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[17] Other senators similarly understood that time limitations as contained in the D.C. Crime Act and the Scott Amendment amounted to a compromise position on the *McNabb-Mallory* rule. For instance, Senator Metcalf stated:

> Last December, after discussion and debate, we reached [in the D.C. Crime Act] a compromise in connection with the *Mallory* case. Many people thought that compromise was going too far, but at least we provided that 3 hours would be a reasonable time to hold persons.

114 Cong. Rec. 14,173.

The Scott Amendment was approved, and the bill passed. 114 Cong. Rec. 14,186, 14,798. In adopting the compromise embodied in Title II and the D.C. Crime Act,[18] both the advocates and opponents of the originally-proposed § 3501(c) achieved some measure of success: there would be no more automatic suppression of confessions during periods of minimal delay (as had occurred in *Alston*), and the threat of indefinite incommunicado questioning would be lessened. No one, however, intended to abrogate the *McNabb-Mallory* rule entirely or to make voluntariness the sole test for the admissibility of confessions taken more than six hours after arrest.

The bill was then returned to the House, where it passed after minimal further debate. 114 Cong. Rec. 16,065-78, 16,271-300. Title II was mentioned by several representatives on the House floor, some of whom characterized it as overruling *Mallory* – to what degree was often left unspecified.[19] Other

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[18] *See also Frazier v. United States*, 419 F.2d 1161, 1171 n.2 (D.C. Cir. 1969) (Burger, C.J., concurring in part and dissenting in part) ("Title II [of the Omnibus Act] substantially incorporates Title III of the District of Columbia Crime Bill.").

[19] *See, e.g.*, 114 Cong. Rec. 16,066 (remarks of Rep. Celler) ("Title II would turn the clock backward to the day before *Mallory*. . . . "); *id.* at 16,273 (remarks of Rep. Rogers) ("Delay in bringing a suspect before a committing magistrate . . . would not be the sole criterion to be considered."); *id.* at 16,275 (remarks of Rep. MacGregor) ("Section 3501(c) overrules the *Mallory* decision."); *id.* at 16,276 (remarks of Rep. Anderson) ("Section 3501(c) does overrule the *Mallory* decision. * * * Specifically, a 6-hour delay before the suspect is brought before a committing

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representatives recognized the Senate bill as a compromise on the issue of rolling back Supreme Court decisions.[20] None of these remarks is particularly persuasive evidence of Congress's intent in enacting § 3501, however, because each was made in passing by individual members during floor debate in the chamber in which § 3501 did not originate. *See, e.g.*, *Garcia v. United States*, 469 U.S. 70, 76 (1984) (eschewing reliance on general comments during floor debate); *Steiner v. Mitchell*, 350 U.S. 247, 254 (1956) (when legislative history in chambers conflicts, history from chamber in which statutory language originated more persuasive).

The authoritative legislative history with respect to § 3501 and the Scott Amendment is the remarks of Senators McClellan and Scott, the sponsor and floor

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magistrate would be permitted."); *id.* at 16,295 (remarks of Rep. Reid) ("Title II would reverse [*Mallory*]. . . .").

[20] *See, e.g.*, 114 Cong. Rec. 16,076-77 (remarks of Rep. Sikes) ("The language correcting some of the policies laid down by the Supreme Court is the most important that has been brought to the House in many months on this subject. In fact, it is the only language which has cleared the Senate which offers any hope of correcting the extremely damaging actions of the Supreme Court."); *id.* at 16,271 (remarks of Rep. Smith) ("Undoubtedly, some feel that the authority of the Supreme Court is being restricted while others may feel that the measure should go further in restricting the authority of the Supreme Court."); *id.* at 16,285 (remarks of Rep. Roth) ("This bill contains provisions which somewhat modify certain court decisions."); *id.* at 16,297-98 (remarks of Rep. Pollock) ("The question in my mind concerning Title II is whether we in Congress are today going far enough to overturn some of the Supreme Court decisions. . . .").

manager of the bill and the proponent of the amendment in question, respectively. *See, e.g.*, *Lewis v. United States*, 445 U.S. 55, 63 (1980) (remarks of bill's sponsor and floor manager entitled to weight); *Federal Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976) (remarks of amendment's proponent entitled to weight). The remarks of these senators during consideration of the Tydings and Scott Amendments confirm beyond doubt an intent to retain the *McNabb-Mallory* rule for confessions taken more than six hours after arrest. Indeed, the lower courts that have examined the legislative history agree that it supports this reading of the statute. *Perez*, 733 F.2d at 1033-34; *Alvarez-Sanchez*, 975 F.2d at 1402; *Superville*, 40 F. Supp. 2d at 682-83; *United States v. Wilbon*, 911 F. Supp. 1420, 1428-30 (D.N.M. 1995).

(b) Senator McClellan's management of Title II during debate on the Tydings Amendment and the Scott Amendment clarifies that § 3501(c) alone was intended to address the *McNabb-Mallory* rule.

The legislative history likewise confirms that subsection (c) is the only provision of § 3501 meant to address the *McNabb-Mallory* rule, and that subsections (a) and (b) were not intended to have any effect on the rule. These subsections were designed to operate independently, addressing discrete issues

pertaining to the admissibility of confessions: subsections (a) and (b) were meant to overrule *Miranda*, and subsection (c) – alone – was meant to address the *McNabb-Mallory* rule.[21]

The independent, parallel functioning of subsections (a)-(b) and (c) is demonstrated most clearly by Senator McClellan's management of Title II during debate on the Tydings and Scott Amendments. The Tydings Amendment was submitted as a motion to strike Title II in its entirety.[22] 114 Cong. Rec. 13,651,

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[21] *See, e.g.*, 114 Cong. Rec. 11,594 (remarks of Sen. Morse) ("Section 3501(c) [pre-amendment version] provides that a confession shall not be inadmissible in a Federal court solely because of delay between arrest and arraignment of the defendant. This provision would overrule the Supreme Court's decision in [*Mallory*]."); *id.* at 12,293 (remarks of Sen. Fong) ("The outright repeal of *Mallory* by § 3501(c) [pre-amendment version] would leave the 'without unnecessary delay' provision of rule 5(a) of the Federal Rules of Criminal Procedure as a rule without a remedy."); *id.* at 13,846 (remarks of Sen. McClellan) ("Title II would return to the rule of reason [in cases of presentment delay] by providing that – § 3501(c) [quoting pre-amendment subsection (c)]."); *id.* at 14,131 (remarks of Sen. Bible) ("The design of [pre-amendment subsection (c)] is to overcome a serious impediment to the administration of justice in the Federal criminal courts caused by [*Mallory*]."); *id.* at 14,184 (remarks of Sen. Spong) ("There is ample statistical evidence to show the problems in criminal prosecution caused by [*Mallory*]. * * * Accordingly, I supported paragraph (c) of § 3501, as well as paragraphs (d) and (e) of the same section.").

[22] A separate amendment proposed by Senator Tydings replaced Title II with a directive that Congress undertake a factual investigation into the impact of Supreme Court criminal procedure decisions on law enforcement. 114 Cong. Rec. 13,830 (Amendment No. 804). Senator Hart had previously proposed a

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13,830 (Amendment No. 788). In response, Senator McClellan divided Title II so that the Senate could separately vote to strike or retain each of its constituent parts. *Id.* at 14,156-57.

Senator McClellan divided the title into several parts, including one division covering § 3501(a) and (b), and a separate division covering § 3501(c). 114 Cong. Rec. 14,171. He defined the § 3501(a)-(b) division as relating to *Miranda*, and the § 3501(c) division as relating to the *McNabb-Mallory* rule:

> [Division one] has to do with the *Miranda* decision and says that the *Miranda* case shall be taken into consideration by the trial judge in determining whether a statement is voluntary and if he determines that the confession is voluntary, he then submits it to the jury. . . . * * *
>
> [With respect to division two,] the Senate has [previously] voted on the *Mallory* rule. . . . The Senate approved of this once, and I hope it does so again.

Id. at 14,171-72. Senator Tydings concurred in the division of Title II, describing it more succinctly:

> Division No. 1 is the *Miranda* decision. Division No. 2 is the *Mallory* decision.

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similar amendment. *Id.* (Amendment No. 803). Amendments 804 and 803 were rejected and withdrawn, respectively. *Id.* at 14,157, 14,171.

Id. at 14,172. On the ensuing votes, § 3501(a) and (b) (overruling *Miranda*) was retained in the bill by a vote of 55-29, and § 3501(c) (abrogating the *McNabb-Mallory* rule)[23] was retained by a vote of 58-26. *Id.* at 14,172, 14,174-75.

Clearly then, it was understood that § 3501(c), rather than § 3501(a)-(b), addressed the *McNabb-Mallory* rule. If it were otherwise, dividing Title II and voting separately on subsections (a)-(b) and (c) would have been a meaningless exercise, since a vote to retain subsections (a) and (b) would have abrogated the *McNabb-Mallory* rule, even if subsection (c) had been stricken. Thus, just as reading subsection (a)'s voluntariness standard as nullifying the rule renders subsection (c) superfluous, *see supra* pp. 29-30, such a reading renders the separate vote on subsection (c) an empty act – an equally intolerable consequence. By dividing Title II, identifying subsections (a) and (b) as *Miranda*-related and subsection (c) as *Mallory*-related, and voting separately (by different margins) to retain the provisions, the Senate confirmed that subsection (c), alone, addresses the *McNabb-Mallory* rule.

Senator McClellan again demonstrated the intended independent operation of subsections (a)-(b) and (c) during consideration of the Scott Amendment. As introduced, the Scott Amendment would

[23] The motion to strike proceeded on the original version of Title II – before the Scott Amendment added the six-hour limitation to § 3501(c). 114 Cong. Rec. 14,172-75.

have stricken the last clause of originally-proposed subsection (c) (" . . . is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury") and replaced it with the new text (" . . . was made or given by such person within [six] hours immediately following the arrest or other detention"). 114 Cong. Rec. 14,184.

Senator McClellan, however, insisted that the new language *follow*, rather than replace, the existing text. 114 Cong. Rec. 14,184. He explained that the existing text – providing a separate voluntariness standard for admissibility in subsection (c) – needed to be retained in order to render inadmissible involuntary confessions taken within six hours of arrest. *Id.* But if subsections (a) and (b) provided a voluntariness standard applicable in the context of the *McNabb-Mallory* rule, there would be no need to retain a separate voluntariness standard within subsection (c). By insisting on parallel voluntariness standards, Senator McClellen confirmed yet again that subsections (a) and (b) were intended to operate independently of subsection (c), and that the *McNabb-Mallory* rule is addressed by subsection (c) alone. As such, subsection (a) does not override the partial codification of the *McNabb-Mallory* rule in subsection (c).

C. Interpreting § 3501(c) as retaining a modified *McNabb-Mallory* rule will assist law enforcement and the courts by providing a bright-line rule and will guard against the use of delay to elicit *Miranda* waivers.

The effect of interpreting § 3501(c) so as to retain a modified *McNabb-Mallory* rule will be beneficial for law enforcement and the courts. The six-hour time limitation sets a bright-line rule that is much easier for law enforcement and the courts to implement than the totality-of-the-circumstances test used for determining voluntariness under § 3501(a) and (b). Giving full effect to § 3501(c) as a codification of the *McNabb-Mallory* rule with a six-hour exception thus facilitates the administration of justice. As this Court observed in *Dickerson* when it upheld *Miranda*, the totality-of-the-circumstances test of § 3501 is difficult "for law enforcement officers to conform to, and for the courts to apply in a consistent manner." 530 U.S. at 444. With a clear six-hour rule, federal law enforcement officers will know that as long as they take an uncoerced confession within six hours of arrest, it will be admissible under § 3501(c). Confessions taken within this time period will also be much less likely to be deemed involuntary as a result of undue delay under subsections (a) and (b).

On the other hand, if voluntariness is the sole criterion for admissibility, law enforcement officers have no real incentive to respect the right of prompt presentment or § 3501(c)'s six-hour limitation.

Indeed, that is precisely what happened in Mr. Corley's case. Courts then must grapple with the thorny issue of how long of a delay renders a confession involuntary. Inconsistent rulings are inevitable. For this reason, the Court observed in a similar context that having a bright-line rule "conserves judicial resources which would otherwise be expended in making difficult determinations of voluntariness." *Minnick v. Mississippi*, 498 U.S. 146, 151 (1990) (reaffirming rule that once defendant invokes right to counsel, all questioning must cease until counsel is present). A bright-line rule, the Court explained, provides "clarity" and "certainty," and "has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogation are not admissible." *Id. See also Davis v. United States*, 512 U.S. 452, 461 (1994) (rule requiring all questioning cease once defendant requests counsel "provides a bright line that can be applied by officers in the real world of investigation and interrogation without unduly hampering the gathering of information").

The *McNabb-Mallory* rule, as codified in § 3501(c), is also a necessary adjunct to *Miranda*. The rule protects the prophylactic value of *Miranda* warnings by ensuring that presentment delay itself is not used as a means of pressuring those arrested to waive their rights. As the Court stated, "the techniques of police questioning and the nature of custodial

surroundings produce an inherently coercive situation." *Schneckloth v. Bustamonte*, 412 U.S. 218, 247 (1973). The longer a person is subjected to police custody without an opportunity to see a neutral magistrate, the more "inherently coercive" the situation becomes. Delay then becomes a means of undercutting the value of *Miranda* warnings by creating pressure to waive one's rights. *Miranda* does nothing to protect against such delay. For precisely this reason, the *Miranda* Court noted the important prophylactic value of the *McNabb-Mallory* rule, stating that its *Miranda* ruling "does not indicate in any manner, of course, that these rules [Rule 5(a) and *McNabb-Mallory*] can be disregarded." *Miranda*, 384 U.S. at 463 n.32. Accordingly, the *McNabb-Mallory* rule, as codified in § 3501(c), ensures that the prophylactic value of *Miranda* warnings is not undercut by delay in presentment.

II. MR. CORLEY'S TWO CONFESSIONS WERE TAKEN OUTSIDE THE SIX-HOUR TIME PERIOD PROVIDED IN 18 U.S.C. § 3501(c), AND BECAUSE THE DELAY IN HIS PRESENTMENT WAS UNNECESSARY AND UNREASONABLE, THE TWO CONFESSIONS WERE INADMISSIBLE UNDER THE *McNABB-MALLORY* RULE.

This case presents a paradigmatic example of unreasonable presentment delay: delay for the purpose of interrogation. It illustrates the importance of giving effect to § 3501(c) and the *McNabb-Mallory*

rule. The FBI agents delayed Mr. Corley's presentment to a federal magistrate for the purpose of obtaining his oral and written confessions outside § 3501(c)'s six-hour time limitation. In view of the purposefulness of the agents' actions, the delay of over twenty-nine hours in presentment was plainly unreasonable and unnecessary under Rule 5(a) and *McNabb-Mallory*. The confessions obtained through exploitation of that delay should not have been admitted at trial.

A. The confessions were taken well outside the six-hour time limitation of § 3501(c).

Both the majority and the dissent in the Third Circuit agreed that Mr. Corley's oral and written confessions were taken outside the six-hour time period of § 3501(c). J.A. 197 n.7, 227-28. The government concedes this as well. J.A. 228; Brief for Appellee United States at 17, *United States v. Johnnie Corley*, No. 04-4716 (3d Cir. June 2, 2006) ("The statute plainly provides for a safe harbor of six hours, and Corley's first confession unquestionably came after that period."). The record allows no other conclusion.

The FBI agents arrested Mr. Corley on Wednesday, September 17, 2003, at 8:00 a.m. in Sharon Hill, a suburb of Philadelphia. But instead of taking him directly to Philadelphia for presentment before a federal magistrate, the agents held him for three

hours and forty-five minutes at the local Sharon Hill police station so that they could interview neighbors living near where Mr. Corley was arrested to "further [the] investigation." J.A. 40.

At about 11:45 a.m., agents drove Mr. Corley to Philadelphia, where they took him to a hospital to receive treatment for a minor cut on his hand, arriving at 12:12 p.m. They gave no explanation for why Mr. Corley was not either taken to the hospital sooner, or taken before a magistrate for presentment in the morning before going to the hospital. After being treated, Mr. Corley was discharged at 3:20 p.m. and driven a few blocks to the FBI office, arriving at 3:30 p.m. By this time, seven and one-half hours had already elapsed since the arrest, and thus the six-hour time limitation of § 3501(c) had already expired.

Still, the agents made no effort to present Mr. Corley to a magistrate, even though magistrates were readily available that Wednesday afternoon in the same building as the FBI office. J.A. 80, 237. Before presentment, the agents wanted a confession to the bank robbery. Indeed, all of the delay after 3:30 p.m. is attributable to the agents' openly-acknowledged desire to obtain a confession. As Trooper D'Angelo explained, instead of presenting Mr. Corley to a magistrate, his "chief purpose" that afternoon was "to obtain the confession." J.A. 69. So, for over an hour, without asking any questions, D'Angelo and Agent Roselli spoke to Mr. Corley about the benefits of cooperating with the government and how it could result in a lower sentence.

After reviewing a waiver-of-rights form at 5:07 p.m., Mr. Corley began giving his oral confession at 5:27 p.m. Nine hours and twenty-seven minutes had elapsed since his arrest at 8:00 a.m. that morning. This confession, which concluded at 6:38 p.m. (ten hours and thirty-eight minutes after arrest), was plainly not made "within six hours immediately following" Mr. Corley's arrest, and it therefore was outside the "time limitation" of § 3501(c).

After obtaining the oral confession, Agent Roselli still was not ready to present Mr. Corley to a magistrate. He wanted the confession in writing. But Mr. Corley said he was too tired, so the agents took him to the Federal Detention Center for the night. The next morning – Thursday – magistrate judges were holding arraignments at 10:00 a.m. Instead of taking Mr. Corley to the magistrate judge, however, the FBI agents brought him back to the FBI office at 10:30 a.m. for further questioning. FBI Agent Heaney candidly admitted that their desire to question Mr. Corley further was "the reason that Mr. Corley was not brought before a magistrate" that morning. J.A. 83. Mr. Corley finally signed a confession written by Roselli at 10:45 a.m. He was ultimately arraigned at about 1:30 p.m. that day – twenty-nine and a half hours after his arrest. Both confessions, accordingly, were outside the § 3501(c) six-hour time limitation.

B. The delay of over twenty-nine hours from arrest until presentment was unreasonable and unnecessary under Rule 5(a) and the *McNabb-Mallory* rule.

Because both confessions were outside the six-hour time limitation of § 3501(c), they are inadmissible under the *McNabb-Mallory* rule and Rule 5(a) if the delay in presentment was "unnecessary."[24] The delay of nearly four hours during which Mr. Corley was held at the Sharon Hill police station Wednesday morning was unnecessary, given that Mr. Corley could have been transported to Philadelphia during this time and either presented to a magistrate or treated at the hospital. Since the purpose of this delay was to allow the agents to conduct interviews of neighbors and "further [the] investigation," J.A. 40, it was plainly unnecessary. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991) (citing as example of unnecessary presentment delay "delays for the purpose of gathering additional evidence to justify the arrest"). The time spent in the hospital was also unnecessary, since it was not for a medical emergency but rather for minor care. J.A. 236-37 (Sloviter, J., dissenting). Moreover, even if the hospital treatment were considered a medical emergency necessitating immediate treatment, it cannot excuse or make

[24] As Judge Sloviter observed, "[t]he courts have generally equated 'unnecessary' [with] 'unreasonable.'" J.A. 236 (Sloviter, J., dissenting).

necessary any of the delay after the hospital treatment.

All of the delay after 3:30 p.m. Wednesday, when Mr. Corley arrived at the FBI office from the hospital, was for the purpose of obtaining a confession and was therefore, by definition, "unnecessary." *See Mallory*, 354 U.S. at 455 (delay in presentment "must *not* be of a nature to give opportunity for extraction of a confession") (emphasis added); *United States v. Wilson*, 838 F.2d 1081, 1085 (9th Cir. 1988) (holding that the "desire of the officers to complete the interrogation is, perhaps, the most unreasonable excuse possible under § 3501(c)").[25] As in *Upshaw*, 335 U.S. at 414, the agents here readily admitted this improper purpose. *See* J.A. 53, 68-69, 138-39. And like the defendant in *Mallory*, Mr. Corley was "detained . . . within the vicinity of numerous committing magistrates." 354 U.S. at 455. All of this delay, accordingly, was unreasonable and unnecessary, and because the confessions were a direct result of this delay, they are inadmissible under the *McNabb-Mallory* rule, as codified in § 3501(c).

[25] The unnecessary delay includes the overnight stay at the detention center, since Mr. Corley was held overnight in order to obtain the written confession and not because a magistrate was unavailable during the day of his arrest.

CONCLUSION

The judgment of the United States Court of Appeals for the Third Circuit should be reversed, Mr. Corley's oral and written confessions should be held inadmissible, and the case remanded to the Court of Appeals with instructions to remand to the district court for a new trial.

Respectfully submitted,

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